

CHIEF JUDGE BRYAN D. LYNCH

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In re: CDC PROPERTIES I, LLC, Debtor.	Bankruptcy No. 11-41010-BDL Chapter 11 Adversary Case No.
OLYMPIA OFFICE, LLC, a New York limited liability company; WA PORTFOLIO, LLC, a Delaware limited liability company; MARINERS PORTFOLIO, LLC, a Virginia limited liability company; and SEAHAWK PORTFOLIO, LLC, a Florida limited liability company, Plaintiffs, v. MLMT 2005-MCP1 WASHINGTON OFFICE PROPERTIES, LLC, a Washington limited liability company; MIDLAND LOAN SERVICES, a division of PNC BANK, N.A.; RAINIER FORECLOSURE SERVICES, INC., a Washington corporation; JSH PROPERTIES, INC., a Washington corporation, Defendants.	NOTICE OF REMOVAL TO BANKRUPTCY COURT PURSUANT TO 28 U.S.C. 1452

**NOTICE OF REMOVAL TO BANKRUPTCY COURT
PURSUANT TO 28 U.S.C. 1452 - 1**

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1 COMES NOW, defendant MLMT 2005-MCP1 Washington Office Properties,
2 LLC (“Noteholder”), by and through its undersigned counsel of record, and sets forth
3 the following facts on its behalf:

4 1. On December 6, 2017, the above-named plaintiffs, Olympia Office, LLC
5 (“Olympia”), WA Portfolio, LLC (“WA”), Mariners Portfolio, LLC (“Mariners”), and
6 Seahawk Portfolio, LLC (“Seahawk”, and collectively with Olympia, WA, and
7 Mariners, “Plaintiffs”), filed a Complaint for Declaratory Relief, Injunctive Relief,
8 Accounting, Breach of Fiduciary Duty, Conversion, Removal of JSH Properties, Inc.,
9 and for Tortious Interference with a Business Expectancy (the “Complaint”) against
10 Noteholder, Midland Loan Services, a division of PNC Bank (“Midland”), Rainier
11 Foreclosure Services, Inc. (“Rainier”), and JSH Properties, Inc. (“JSH”, and collectively
12 with Noteholder, Midland and Rainier, “Defendants”) in the Superior Court of the State
13 of Washington in King County (the “Superior Court”), Case No. 17-2-31354-8 SEA (the
14 “Superior Court Action”). A true and correct copy of the Complaint is attached hereto
15 as Exhibit A.

16 2. Also on December 6, 2017, the Plaintiffs or the Superior Court filed the
17 following pleadings attached hereto respectively as Exhibits B through E: Motion for
18 Order to Show Cause Why Preliminary Injunctive Relief Should Not Be Issued
19 (“Motion”) (Exhibit B); Case Information Cover Sheet and Area Designation (Exhibit
20 C); Order Setting Civil Case Schedule (Exhibit D): and Order to Show Cause (Exhibit
21 E).

22 3. Exhibits A through E were served on the Defendants on or about
23 December 6, 2017.

24 4. In the Complaint and Motion, Plaintiffs make allegations against
25 Defendants related to (i) the foreclosure sale of eight commercial real properties located
26 in Washington (four in Olympia, one in Lacey, one in Tumwater, one in Wenatchee,
27 and one in Seattle) (the “Properties”), and (ii) alleged violations of the Plan of
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1 Reorganization (the “Plan”) of debtor CDC Properties I, LLC (“Debtor”). Specifically,
2 Plaintiffs allege, among other things, that Noteholder (the beneficiary under the deeds
3 of trust on the Properties) and Midland (the Special Servicer) breached the Plan by
4 manufacturing defaults under the obligations on the loans secured by the Properties (the
5 “Loans”), warranting injunctive relief precluding Noteholder from proceeding with its
6 properly scheduled foreclosure of the Properties on December 15, 2017. As detailed
7 below, this Court explicitly reserved jurisdiction to interpret and enforce the Plan.

8 5. Plaintiffs are not the borrowers under the Loans. The Properties were
9 property of this Bankruptcy Estate, owned by Debtor, which was the borrower on the
10 Loans. Noteholder’s predecessor was the secured lender under the Loans secured by
11 the Properties, and Debtor filed this case after defaulting on the Loans. On November
12 22, 2011, this Court confirmed the Plan (Dkt. No. 119). Under the Plan, the Loans were
13 restructured with revised monthly payment amounts and a new maturity date of October
14 17, 2017, but documents evidencing the Loans, including Notes and Deeds of Trust and
15 Assignments of Rents, remained in effect pursuant to their terms, except with respect to
16 the new payment amounts and maturity date. The Loans matured almost two months
17 ago.

18 6. The Plan also prohibited the Debtor from transferring the Properties unless
19 contemporaneously therewith, Noteholder was paid in full on the Loans:

20 The Reorganized Debtor may sell or refinance the Real Property, or any
21 component thereof, at any time *if the proceeds of the sale or refinance*
are sufficient to pay all Allowed Claims in Classes 1-5 . . . (emphasis
22 added).

23 Plan, Section VII(6), page 14, lines 10-12.

24 7. The Deeds of Trust, which remained in force and effect under the Plan,
25 also prohibited the transfer of the Properties without the prior written consent of
26 Noteholder:
27

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1 Borrower shall not Transfer, nor permit any Transfer, without the prior
2 written consent of Lender, which consent Lender may withhold in its sole
3 and absolute discretion.

4 Deed of Trust, Section 9.02. The definition of “Transfer” in the Deed of Trust contains
5 no applicable exceptions and an outright conveyance of the Properties is a “Transfer”.

6 8. The Plan also contained the following jurisdiction retention provisions:

7 Following the Confirmation Date, the Bankruptcy Court shall retain
8 jurisdiction over the Reorganized Debtor and the Assets until the Plan is
9 fully consummated and an order closing the Case is entered by the
10 Bankruptcy Court.¹ The Bankruptcy Court’s retained jurisdiction shall
11 give it authority to hear matters for purposes of administering the Plan,
12 including without limitation: . . . 5. To issue orders in aid of execution of
the Plan and to issue injunctions or take such other actions or make such
other orders as may be necessary or appropriate to restrain interference
with the Plan or its execution or implementation by any entity; . . . 8. To
determine any disputes arising in connection with the interpretation,
implementation, execution or enforcement of the Plan, the Confirmation
Order, or any other order of the Bankruptcy Court; 9. To recover all
Assets, wherever located.

13 Plan, Section XIV, pages 17-18.

14 9. After confirmation of the Plan, Debtor defaulted under the Loans,
15 Noteholder’s predecessor instituted foreclosure proceedings, and foreclosure sales of
16 the Properties were scheduled for October 21, 2016. Approximately one month prior to
17 the foreclosure sales, Plaintiffs, having had no prior connection whatsoever to Debtor,
18 Noteholder, the Loans or the Properties, were formed without adequate capitalization,
19 and Plaintiffs and their principals wrongfully induced Debtor, in violation of the Plan,
20 to transfer the Properties (allegedly worth in excess of \$40 million, according to
21 Plaintiffs) to Plaintiffs in fractional interests for \$100,000, with the intent of stopping
22 the foreclosure sales and maintaining control over the Properties through serial
23 bankruptcy filings. On October 20, 2016, the day before the scheduled foreclosure sales,
24 the first of the four Plaintiffs, Olympia, filed chapter 11 bankruptcy in the Eastern
25 District of New York. While Plaintiffs intended on filing serial bankruptcy petitions in

26
27 ¹ This bankruptcy case was closed on February 15, 2012. However, this Court reopened this
bankruptcy case on December 14, 2016.

1 different bankruptcy courts, the other three Plaintiffs filed bankruptcy together at the
2 end of November, 2016 to stop Noteholder's motion to enforce the Plan against them
3 (the "Enforcement Motion"). Noteholder had filed the Enforcement Motion in this
4 Court based on Debtor's transfer of the Properties to Plaintiffs in violation of the Plan.
5 Had the other three Plaintiffs not filed bankruptcy on the eve of the hearing on the
6 Enforcement Motion, the Enforcement Motion would have proceeded before this Court.
7 For approximately the next year, Plaintiffs' bankruptcy proceedings in the Eastern
8 District of New York continued, culminating in an evidentiary hearing, after which the
9 court in the Eastern District of New York dismissed the Plaintiffs' bankruptcy cases to
10 allow Noteholder to proceed with the foreclosure sales of the Properties. Attached
11 hereto as Exhibits F and G respectively are (i) Noteholder's Evidentiary Hearing Brief
12 (which sets forth in detail Plaintiffs' wrongful conduct warranting dismissal of the
13 Plaintiffs' bankruptcy cases and negating the claims in the Complaint and Motion), and
14 (ii) the transcript of the Eastern District of New York's ruling conference, in which the
15 Court dismissed Plaintiffs' bankruptcy cases. The order dismissing Plaintiffs'
16 bankruptcy cases was entered October 19, 2017.

17 10. On December 7, 2017, the day after Plaintiffs filed the Complaint and
18 Motion, the Sharon Graham Bingham 2007 Trust, Henry W. Dean, Trustee (the "Trust")
19 filed its own complaint and motion for injunctive relief in this Bankruptcy Court against
20 Noteholder and Rainier initiating Adversary Proceeding Number 17-04119-BDL (the
21 "Trust Adversary Proceeding"). In the Trust Adversary Proceeding, the Trust alleges
22 essentially the same facts and seeks the same relief against Noteholder as Plaintiffs
23 allege and seek against Noteholder in the Complaint and Motion. The Trust alleges that
24 this Court has jurisdiction over such claims under 28 U.S.C. Section 157(b)(1) and under
25 the retained jurisdiction of the Plan.

26 11. This Notice of Removal is filed pursuant to §§1334 and 1452(a) of Title
27 28 of the United States Code, without prejudice to Noteholder's denial of the allegations

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1 in the Complaint, assertion of affirmative defenses, objection to the Motion, and
2 assertion of counterclaims and third-party claims.

3 12. Based on the foregoing and as set forth below, the District Court for the
4 Western District of Washington has original jurisdiction over the subject matter of the
5 Superior Court Action pursuant to §1334 of Title 28 of the United States Code. Pursuant
6 to Local Rule LCR 87(a) of the United States District Court for the Western District of
7 Washington (the “District Court”), the District Court has issued a standing order
8 referring all cases under Title 11, United States Code, and all cases arising in or related
9 to Title 11 cases, to the United States Bankruptcy Court for the Western District of
10 Washington. Pursuant to Local Rule 9027-1(a) of this Court, Noteholder is properly
11 filing this Notice of Removal with this Court. This is a core matter pursuant to §157(b)
12 of Title 28 of the United States Code. The claims of Plaintiffs in the Superior Court
13 Action fall under the jurisdiction of the Bankruptcy Court, and are also governed by the
14 United States Bankruptcy Code and the jurisdiction retention provisions in the Plan cited
15 above. For example, Plaintiffs allege that “Part of the [Plan] specified that no payments
16 toward the smaller B-Note would be required for a period of eighteen months. Yet,
17 defendant Midland breached its obligations and made a large payment toward the B-
18 Note well before the expiration of the eighteen month period.” [Complaint, page 5,
19 paragraph 3.10.]. Defendants deny Plaintiffs’ allegations. In any case, Plaintiffs’
20 disputed allegations directly implicate this Court’s jurisdiction under the Plan to
21 “determine any disputes arising in connection with the interpretation, implementation,
22 execution or enforcement of the Plan.” Similarly, Defendants’ assertion that Debtor’s
23 transfer of the Properties to Plaintiffs without repaying the Loans in full violated the
24 express provisions of the Plan, directly implicates all of the jurisdiction retention
25 provisions cited above. Accordingly, this Court has jurisdiction over the Superior Court
26 Action as expressly set forth in the Plan, as well as under §§1334 and 1452(a) of Title
27 28 of the United States Code.

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1 13. This Notice is being filed within thirty (30) days after service of the
2 Summons and Complaint.

3 14. Upon removal, Defendants consent to entry of final orders or judgment by
4 the Bankruptcy Court.

5 WHEREFORE, Noteholder hereby gives notice that the Superior Court Action
6 now pending against the Defendants in the Superior Court is removed from the Superior
7 Court to the United States Bankruptcy Court for the Western District of Washington.

8 DATED this 11th day of December, 2017.

LANE POWELL PC

By /s/ Abraham K. Lorber
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**NOTICE OF REMOVAL TO BANKRUPTCY COURT
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1 **CERTIFICATE OF SERVICE**

2 I certify that on the date indicated below, I caused the foregoing document to be
3 presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In
4 accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court
5 will send e-mail notification of such filing to the ECF recipients of record.

6 I affirm under penalty of perjury under the laws of the United States that the foregoing
7 is true and correct to the best of my knowledge.

8 SIGNED December 11, 2017, at Seattle, Washington.

9
10 */s/ Peter Elton* _____
11 Peter Elton
12 Legal Assistant

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